TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1454.

ISAAC B. FELTS, PLAINTIFF IN ERROR,

vs.

JACOB W. HOYSRADT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED OCTOBER 21, 1889.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 27, 1889.

1 UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States of America to the honorable the judges of the supreme court of the State of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Isaac B. Felts, appellant, and Jacob W. Hoysradt, appellee, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or

2 statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the sixteenth day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOSEPH P. BRADLEY,
Associate Justice Sup. Ct U. S.

3 [Endorsed:] Writ of error.

STATE OF PENNSYLVANIA, } ss:
City and County of Philadelphia, }

To the honorable the justices of the Supreme Court of the United States:

The record and proceedings, with all things concerning the same, in the within-mentioned cause are herewith returned, as within commanded.

{Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.}

CHAS. S. GREENE,
Prothonotary.

4 *Recognizance to United States Supreme Court.*

Know all men by these presents that we, Isaac B. Felts, Michael Hannick, and Benton Coleman, all of the county of Lackawanna, State of Pennsylvania, are held and firmly bound unto Jacob W. Hoysradt, of the city of Hudson, Columbia county, State of New York, in the full and just sum of forty thousand dollars, to be paid to the said Jacob W. Hoysradt or his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eighth day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at a supreme court of the State of Pennsylvania, in a suit depending in said court between Isaac B. Felts, appellant, and Jacob W. Hoysradt, appellee, a decree was rendered against the said Isaac B. Felts, appellant, and the said appellant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation, directed to the said Jacob W. Hoysradt, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Isaac B. Felts, plaintiff in error as aforesaid, shall prosecute
5 his writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

ISAAC B. FELTS. [SEAL.]
MICHAEL HANNICK. [SEAL.]
BENTON COLEMAN. [SEAL.]

Sealed and delivered in presence of—
A. RICKETTS.

Approved by—
JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

I hereby certify that the above is a true and correct copy of the bond filed in above case.

In testimony whereof I have hereunto set my hand and the seal of said court, at Philadelphia, this 19th day of October, A. D. 1889.

{Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.}

CHAS. S. GREENE,
Prothonotary.

6 The United States of America to Jacob W. Hoysradt, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Pennsylvania, wherein Isaac B. Felts is plaintiff in error and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, this sixteenth day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

Copy served and service accepted this — day of April, A. D. 1889.

[Endorsed:] Citation.

7 On this 22nd day of April, in the year of our Lord one thousand eight hundred and eighty-nine, personally appeared before me, the subscriber, Andris Felts, and makes oath that he delivered a true copy of the within citation to Jacob W. Hoysradt, within named.

ANDRIS FELTS.

Sworn to and subscribed the 22nd day of April, A. D. 1889.

[Seal Columbia County.]

ISAAC P. ROCKEFELLER, *Clerk.*

8 JACOB W. HOYSRADT *vs.* ISAAC B. FELTS. } No. 250. October Term, 1886.

Know all men by these presents that I, Isaac B. Felts, of the township of Lackawanna, in the county of Lackawanna, in the State of Pennsylvania, am held and firmly bound unto Jacob W. Hoysradt, of the city of Hudson, in the State of New York, in the sum of forty

thousand dollars, lawful money of the United States of America, to be paid to the said Jacob W. Hoysradt, or to his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, I bind myself and my administrators, heirs, and executors, and each of us, firmly by these presents.

Sealed with my seal. Dated the ninth day of June, in the year of our Lord one thousand eight hundred and eighty-one.

The condition of this obligation is such that if the above-bounded Isaac B. Felts, or his heirs, executors, administrators, or any of them, shall and do well and truly pay or cause to be paid unto the above-named Jacob W. Hoysradt, or to his certain attorney, executors, administrators, or assigns, the just sum of twenty thousand dollars, lawful money, as aforesaid, on the first day of June, in the year of our Lord one thousand eight hundred and eighty-six, with lawful interest thereon, to be computed from the date of this instrument, at the rate of six per centum per annum, to be paid annually on first days of June in each year until the said principal sum shall be fully paid and
9 satisfied, the first payment to be made on the first day of June next, without any fraud or further delay, then the above obligation to be void, or else to be and remain in full force and virtue.

(Signed) ISAAC B. FELTS. [SEAL.]

Sealed and delivered in the presence of—

A. RICKETTS.
P. M. JORDAN.

10 Whereas Isaac B. Felts, in and by a certain obligation bearing even date herewith, doth stand bound unto Jacob W. Hoysradt in the sum of forty thousand dollars, lawful money of the United States of America, conditioned for the payment of twenty thousand dollars on the first day of June, A. D. eighteen hundred and eighty-six, with lawful interest; and it is expressly provided that in case of default of payment of any installment of interest after sixty days from the time the same falls due, then the whole amount, principal and interest, shall become due and payable immediately:

These are to desire and authorize you or any of you to appear for me, or my heirs, executors, or administrators, in the said court or elsewhere, in action of debt, there or elsewhere brought or to be brought, against the said Isaac B. Felts or his heirs, executors, or administrators, at the suit of the said Jacob W. Hoysradt or his executors, administrators, or assigns, on the said obligation, as of any term or time past, present, or any other subsequent term or time, there or elsewhere to be held, and confess judgment thereupon against me, the said Isaac B. Felts, or my heirs, executors, or administrators, for the sum of forty thousand dollars, penalty, and real debt twenty thousand dollars, lawful money of the United States of America, debt, besides cost of suit by *non sum informatus*, *nihil dicit*, or otherwise as to you shall seem meet, and for your or any your so doing this shall be your sufficient warrant; and I do hereby, for myself, my heirs, executors, and administrators, remise, release, and forever

quitclaim unto the said Jacob W. Hoysradt, or his certain
11 attorney, executors, administrators, and assigns, all and all manner of error or errors, misprisions, misentries, defects, and imperfections whatever in the entering of said judgment, or any process or proceedings thereon or thereto, or anywise touching or concerning the same.

In witness whereof I have hereunto set my hand and seal the ninth day of June, in the year of our Lord one thousand eight hundred and eighty-one.

(Signed) ISAAC B. FELTS. [SEAL.]

Sealed and delivered in the presence of—
A. RICKETTS.
P. M. JORDAN.

12 In Common Pleas, Lackawanna Co. Oct. T., 1886.

JACOB W. HOYSRADT
vs.
ISAAC B. FELTS. } No. —.

It is hereby agreed that an amicable action of debt in the annexed bond may be entered by the prothonotary with the same effect as if a summons had been duly issued and been duly served by the sheriff upon Isaac B. Felts, the above-named defendant, at the suit of Jacob W. Hoysradt, plaintiff.

So agreed July 14th, 1886.

EDW'D B. STURGES,
Attorney for Plaintiff.
MARTIN R. KAYS,
Attorney for Defendant by Virtue of Annexed Warrant.

13 *Plaintiff's Statement.*

JACOB W. HOYSRADT
vs.
ISAAC B. FELTS. }

The plaintiff's claim in this case is founded upon the annexed bond, signed, sealed, executed, and delivered by Isaac B. Felts, the above-named defendant, to Jacob W. Hoysradt, the above-named plaintiff, on the ninth day of June, A. D. 1881, for the sum of forty thousand dollars, conditioned for the payment of the sum of twenty thousand dollars, with interest, on the first day of June, A. D. 1886.

And the plaintiff says there remains due and unpaid upon said bond the sum of twenty-four thousand one hundred and eighty-five $\frac{62}{100}$ dollars at this date, and to recover the said penal sum of forty thousand dollars this suit is brought.

July 14th, 1886.

EDW'D B. STURGES,
Att'y for Plaintiff.

14 In Com. Pleas, Lacka. Co. Oct. T., 1886.

JACOB W. HOYSRADT
vs.
ISAAC B. FELTS. } No. —.

I, Martin R. Kays, an attorney of the court of common pleas of Lackawanna county, as empowered by the warrant of attorney hereto annexed, do hereby appear for said Isaac B. Felts in the above-entitled action, and by virtue of the authority therein contained do hereby confess judgment in said action of debt for the penal sum of forty thousand dollars and costs against said Isaac B. Felts, with leave to issue execution thereon for the sum of twenty-four thousand one hundred and eighty-five and $\frac{62}{100}$ dollars, and interest and costs, which is the amount of principal and interest unpaid thereon at this date, the whole of which is due.

Witness my hand and seal this fourteenth day of July, A. D. 1886.

MARTIN R. KAYS. [SEAL.]

15 *Fi. Fa.*

[Vignette.]

LACKAWANNA COUNTY, *ss:*

The Commonwealth of Pennsylvania to the sheriff of said county, Greeting:

We command you that of the goods and chattels, land and tenements, of Isaac B. Feltz, late of your county, yeoman, in [SEAL.] your bailiwick you cause to be levied as well a certain debt of twenty-four thousand one hundred eighty-five and $\frac{62}{100}$ dollars, which Jacob W. Hoysradt, lately in your court of common pleas of Lackawanna county, before our judge, at Scranton, recovered against defendant, as well as four and $\frac{50}{100}$ dollars, which in our said court were adjudged for the damages which pl'ff sustained by occasion of the detention of that debt, and have you these moneys before our judge at Scranton, at our county court of common pleas, there to be held for the county of Lackawanna, on the first Monday of October next, to render the said plaintiff for debt and damages aforesaid, whereof the said defendant stands convict, as appears of record, etc.; and have you then and there this writ.

Witness the Hon. Alfred Hand, president judge of the said court, at Scranton, this 14th day of July, in the year of our Lord one thousand eight hundred and eighty-six.

(Signed) THOS. H. DALE,
Prothonotary,
Per M. W. LOWRY.

16 [Endorsed:] No. 250. Oct. term, 1886. Jacob W. Hoysradt *vs.* Isaac B. Feltz. *Fi. fa.* Returnable to Oct. term, 1886.

Debt, penal		40,000 00
Debt, real		24,185 62
Prot.	2 00	
Com.	50	
Att'y	3 00	
		5 50
Or. C.		
Sheriff		
Arbs.		
Int. 14 July, 1886		
Fi. fa.		60
Sat.		20

No. 42. Oct. term, 1886. Sturges & Jessup & Hand, *p. q.*

To the hon. the judge within named:

Now, Oct. 3, 1886, I do hereby certify and return this writ stayed by order of court. So answers—

W. Z. LEWIS, *Sheriff*,
Per JNO. J. FAHEY, *Deputy.*

17 LACKAWANNA COUNTY, *ss:*

Isaac B. Felts, defendant above named, being duly sworn, says that an execution has been issued upon the above-stated judgment, although the same has been fully paid, as deponent is informed and verily believes.

The said judgment is entered upon a bond given by deponent to the plaintiff for a loan furnished by said plaintiff. At the time of said loan it was agreed that plaintiff should have the right to receive one-half the rents arising from the property of deponent to apply on payments of said loan, and to secure him fully for such loan and in the right to receive said rents there was given to said plaintiff not only the said bond but also a mortgage, and a conveyance of the one-half of the said property and the assignment of one-half of a coal lease then made upon the property, which has since passed into other hands and from which plaintiff has been fully paid the amount of said loan, as deponent is informed and verily believes. Plaintiff now claims that he is not bound to apply such rents on the said loan, but endeavors to defraud deponent by claiming that he has received such rents as an owner and not as a creditor.

(Signed) ISAAC B. FELTS.

Sworn and subscribed this 30th day of April, A. D. 1886, before—
M. W. LOWRY, *Pro Prot.*

Now, August 30th, 1886, a rule is granted to show cause why judgment in this case should not be opened and defendant
18 let into a defense, returnable to next argument court, all proceedings stayed meantime.

By the court.

19 Now, January 6, 1888, upon argument of the rule to show cause why the judgment entered in the above-entitled case shall not be opened, it is respectfully submitted by the defendant that the act of Assembly of the Commonwealth of Pennsylvania, entitled "An act relating to and defining defeasances in this Commonwealth," approved the 8th day of June, A. D. 1881, is invalid and inoperative, because it is in violation of the provision contained in section X, paragraph 1, of the Constitution of the United States, forbidding any State to pass a law impairing the obligation of contracts.

(Signed) A. RICKETTS,
E. N. WILLARD,
JOHN F. SCRAGG,
E. MERRIFIELD,
Counsel for Defendant.

20 *Opinion of the Court.*

This case is before us on a rule to show cause why the judgment should not be opened and defendant let into a defense.

This judgment was entered on a bond dated June 9th, 1881, for the payment to the plaintiff of the just sum of twenty thousand dollars, with lawful interest, said principal sum being payable on the 1st day of June, 1886. This bond was entered to No. 250, Oct. T., 1886, in the court of common pleas of Lackawanna county, on the 14th day of July, 1886, and a *fi. fa.* was issued thereon same day. August 20, of same year, this court granted a rule to show cause why the judgment should not be opened and defendant let into a defense. A voluminous amount of testimony was taken, both for and against this rule. We have gone over this vast amount of testimony with great care, in order to familiarize ourselves with all its details, and reconcile, if possible, its many contradictions. We will first state the salient points of the testimony as adduced on the part of the defendant, and then the testimony on behalf of the plaintiff.

Isaac B. Felts, the defendant in this case, is the uncle of J. W. Hoysradt, the plaintiff. Mr. Felts, at the time this bond was given by him to Mr. Hoysradt, was the owner of a tract of coal land in the township of Lackawanna, county of Lackawanna, Pennsylvania. There was a number of liens against this land, and among them a mortgage assigned to the Delaware, Lackawanna and Western Railroad Company (known throughout the testimony as the D.,
21 L. & W.), for the sum of twenty thousand dollars. This mortgage was due and the D., L. & W. were endeavoring to realize their money on it. On the 7th of June, 1881, the defendant went to Hudson, New York, the home of the plaintiff, with the intention, he says, of obtaining a loan with which to pay off this mortgage and other liens and claims against his real estate. There was nothing definite transacted on the 7th of June. On the morning of the 8th of June they met again, and subsequently on the

morning of the 9th of June, when a deed to Mr. Hoysradt for a one-half interest in this tract of land was given by Mr. Felts; also a mortgage for twenty thousand dollars, and a power of attorney to collect coal royalties.

Mr. Felts, in his own behalf, swears that when he arrived in Hudson, on the 7th of June, 1881, he proceeded to the office of Mr. Hoysradt; that Mr. Hoysradt was busy, and no business of any importance was transacted that day. They met again on the morning of the 8th and engaged in conversation about the loan Mr. Felts desired. They were joined by Frank Hoysradt, a brother of the plaintiff, about this time, and Mr. Felts testifies he and Frank talked the matter over, and came to an agreement, viz: That J. W. Hoysradt was to take a deed, a bond and mortgage for twenty thousand dollars, and furnish money enough to pay all Mr. Felts' indebtedness, and if they could get the Hunt lease in "working operation" Felts was to have a certain proportion of the royalties, about ten or fifteen per cent., to live on, and the balance should be applied on the bonds and mortgages,
22 and when Mr. Hoysradt got his pay the property should be reconveyed to Felts. This was a talk between Isaac Felts and Frank Hoysradt, and Felts testifies that he supposes Frank Hoysradt told this to his brother, J. W. Hoysradt, the plaintiff. (A portion of this land was laid out in town lots, and in the deed and mortgage referred to the surface of certain lots and blocks *were* to be reserved to Mr. Felts.) This Mr. Felts says was on the 8th of June, 1881, between 8 and 11 o'clock a. m. After this talk between him and Frank they went to the office where J. W. Hoysradt, the plaintiff, was, and after they got there Albert Hoysradt, a son of plaintiff, and a man named Jordan commenced to draw the papers, and that he supposes Frank Hoysradt directed the drawing of the papers.

Mr. Felts further testifies that he was induced to go to Hudson on the 7th of June, 1881, through the representations of Frank Hoysradt, who told him the money was ready for him any time on four or five days' notice, and that Frank Hoysradt had telegraphed him to come on, which he did; that when he arrived there Mr. Hoysradt wanted him to give him a deed for the entire property, which he refused, and took his satchel and started for home, but was induced by Frank Hoysradt to remain, which he did; that he at no time during the transaction of that business agreed to deed his property to J. W. Hoysradt except on condition that he was to have a reconveyance of the same as soon as the rents and royalties would pay the moneys advanced by Mr. Hoysradt.

Frank Hoysradt testifies, on behalf of the defendant, that he was the agent of his brother, J. W. Hoysradt, in this transaction; that
23 it was through him, or rather a telegram which his brother, J. W., wrote and signed his name thereto, that Mr. Felts was induced to come to Hudson, and that he was to induce him to sign these papers; that he was present at all conversations and furnished the data from which the scriveners made the deed, mortgage, bond, and power of attorney, and that for so doing he was to receive from his brother a one-twelfth or one-sixteenth interest in

this property. He further testifies that Mr. Felts was so worked up about this matter and in such a nervous condition that he was instructed by Mr. J. W. Hoysradt to keep a close watch on Mr. Felts for fear he would commit suicide; that after the papers were made out, after he had assured him that they were all right and as they had agreed upon that, he finally did so.

J. W. Hoysradt, the plaintiff, testifies that he first learned of Mr. Felts' financial difficulties about April, 1879, when Mr. Felts called to see him at Hudson, and after giving him some advice in reference to making a lease, &c., Mr. Felts returned home. He next saw him in the spring of 1881, when Mr. Felts told him the D., L. & W. Co. had or were about to advertise his property for sale, and wanted him to loan him the money, and stated that his liabilities were about thirty-eight or thirty-nine thousand dollars, and showed him a statement to that effect. He wanted Mr. Hoysradt to advance the money and take the coal royalties, paying him ten or fifteen per cent. thereof if he should require it for living expenses, and when Mr. Hoysradt got all his money back Felts was to deed him one-half of the property. Instead of acceding to this offer he advised
Mr. Felts to go home and make a lease or go to the D., L. &
24 W. Co. and make a lease with them if he could. Felts said
the D., L. & W. should have nothing to do with it. He would let the property sink first. He then told Mr. Felts if he could not do anything to let him know.

That he next saw Mr. Felts on the 7th of June, 1881, at his office, in the Hudson Iron Company's works, in Hudson, N. Y. Mr. Felts came in when he was very busy and waited until he had finished his business; that they went to Mr. Hoysradt's house, had supper, and after that talked about this business. He stated that the sale was to be on Saturday, the 11th of June. He asked if it could not be adjourned, and Felts said no. He stated that the indebtedness against the property was about 38 or 39 thousand dollars. He again desired him to make a loan and take his pay in the royalties, reserving a percentage to Mr. Felts. Mr. Hoysradt further testifies that he informed Mr. Felts at that time that he was informed by Mr. D. N. Green that the D., L. & W. claimed the great or "G." vein, and that he (Felts) had made a lease with Hunt, and as he considered these things a detriment he would have nothing to do with — unless he could have a controlling interest in the property; that they came to no conclusion or agreement on this night (7th of June). They met again next morning, when, he testifies, Mr. Felts renewed his proposition about a loan and paying it from the royalties, &c. He then told him he wanted to see Judge Cadman. At that interview he mentioned something about lots he had sold or contracted to sell, and he ought to reserve the surface, and also the house
where he lived and another house. This was about 11 o'clock a.
25 m., June 8th, and had no further conversation with him about
the matter until that evening, after Judge Cadman returned. In the evening he and Felts went to the office of Judge Cadman, when Mr. Felts, in the presence of Mr. Hoysradt, his son Albert, and a Mr. Jordan, stated that he was in debt largely; that he owned a

valuable tract of coal land near Scranton; that the property was advertised for sale, and he was afraid it would be sold, and wanted me to advance the money to pay his indebtedness, and then repeated that Mr. Hoysradt take the royalties, &c., as already detailed.

Judge Cadman stated that would not do; it must be either a loan or a sale, and he asked him if he intended Mr. Hoysradt was to have one-half of the property. He said he did; and Judge Cadman said that was the time to make a deed, and not afterwards. Judge Cadman then said, "We had better think of this to-night and come here in the morning." That nothing further was done that night. They met again next morning, the 9th of June. Mr. Hoysradt says Mr. Felts and he were in the latter's library, and he asked Felts if he understood what the Judge said, and he told Mr. Felts he must have a deed for one-half of the property, and he would take a mortgage on the other undivided half for whatever the amount might exceed twenty thousand dollars, and to that Mr. Felts agreed. They then went to the office and made that statement substantially to Judge Cadman. The Judge then stated that there ought to be an assignment of one-half interest in the lease and of the claim against the D., L. & W. Co. for coal taken (this claim for coal is for coal taken
26 by the D., L. & W. Co. from the big or "G." vein of coal underlying this land and which they claim to own). *Mr. Felts wanted a restriction clause that Mr. Hoysradt should not have anything to do with the D., L. & W. Co. This was not agreed to. After further talk on the subject Mr. Hoysradt testifies that he got up and left the office, saying he would not have anything to do with it; that he did not care to have anything to do with it; that he was going into it, under protest of his family, simply to help Mr. Felts; that after he had gone twenty or thirty yards from the office his son hailed him and said Mr. Felts wanted him to go back. He refused, and his son urged him. On the way back he met his brother, Frank Hoysradt, who also urged him to go back. He went back and into Judge Cadman's room, and Mr. Felts told the Judge to go on and prepare the papers as they had agreed. The consideration for the deed was to be $20,000.00. Mr. Felts said the entire indebtedness was between $38,000.00 and $39,000.00. The mortgage was also to be for $20,000.00; and if it was found, when they arrived in Scranton, that the indebtedness was less than $40,000.00, then the difference was to be receipted on the $20,000 bond before delivery of the mortgage executed at Hudson. Mr. Hoysradt also testifies that he positively demanded that he should have control of the property or he would not have anything to do with it. Mr. Felts took out his maps and put them on a round table in Judge Cadman's room and pointed out a description of the property. He also had a printed slip containing the advertisement. Mr. Felts stated that it was not correct, as it did
27 not include the piece that was called the "Gore," and that there were other imperfections. He also pointed out what reservations he wanted to make from the map called the "village map." After the papers were prepared Albert Hoysradt read the papers, viz., the bond, mortgage, and deed, to Mr. Felts, and Judge Cadman read the power of attorney and the assignment in presence of

J. W. Hoysradt, Isaac B. Felts, Albert Hoysradt, and P. M. Jordan. No one else was present. Mr. Hoysradt says he then stepped out into the front room, and that soon after his son Albert and Mr. Jordan came out and stated that Mr. Felts hesitated about signing the papers. We went in and asked what the trouble was. He said it was the power of attorney and assignment putting the matter out of his hands, and he wanted that clause in in regard to the D., L. & W. Co. Mr. Hoysradt testifies that he then said to him, "Don't sign these papers at all; it is no accommodation to me to do it. I don't care to have you do it at all, and don't sign them." He sat a minute and said, "Well, I will sign them." He then left the room again and heard Mr. Jordan call Frank Hoysradt from the front room, at the front door, to come in and witness the signatures. Judge Cadman took the papers and said they should be held by some one and not delivered to me. Mr. Felts suggested Judge Cadman come to Scranton and hold the papers in escrow. The Judge said he could not do so; that he must go to Albany. Mr. Felts then proposed that Albert Hoysradt take the papers and hold them until everything was all right. Judge Cadman then handed them to Albert, and we left to get ready to go to the train. We left for Scranton at 3 o'clock that afternoon and arrived in Scranton about 9 o'clock
28 next morning, June 10th, 1881. Mr. Hoysradt also testifies that when they arrived here they missed Mr. Felts, and when questioned as to where he had been stated he went to Wilkes Barre to see Mr. Ricketts. When we arrived here and saw Mr. Sturges we discovered that Mr. Felts had omitted some mortgages from his list, and that the amount would run over $40,000.00—$42,000.00 or $43,000.00. Mr. Sturges then suggested that an assignment be made of those in excess of the amount, and that there should be no merger. The bond drawn in Hudson was not approved of by Mr. Sturges, and another was drawn by him and signed and substituted for it. The deed, bond, mortgage, assignment, power of attorney, &c., were delivered to him; that he paid the amount of the D., L. & W. mortgage, and took an assignment of it to protect him in any sum he would pay in excess of $40,000.00, and when the sum paid was reduced to $40,000.00 he was to satisfy one of the mortgages. He also testifies that Frank Hoysradt was not his agent or confidant in this transaction; that he never consulted with him in reference to the matter, and that whatever interest, if any, that Frank took in the matter it was on his own motion and not his; that the telegram requesting Isaac Felts to come to Hudson was written by him, but at the request of Frank; that he never promised or agreed to give Frank a twelfth or sixteenth interest or any other interest in this property, and that Frank was not present at nor did he hear the negotiations between himself and Isaac Felts in reference to this property; that Mr. P. M. Jordan, one of the persons present and who drew
29 some of these papers, is dead. He died before the testimony in the case was taken.

On behalf of the plaintiff Judge John Cadman testifies that he was consulted by the plaintiff, J. W. Hoysradt; that he suggested the giving of a deed and bond and mortgage; that there was nothing

ever mentioned by Mr. Felts or any one else to him that this was not an absolute and unconditional sale of a one-half interest in the property and a mortgage for $20,000.00. He also testifies that Frank Hoysradt was not in his room that day except when he witnessed the papers after they were made out and signed; that Frank heard none of the conversations, nor did he have a word to say about the negotiations whatever.

Albert Hoysradt corroborates his father and Judge Cadman in everything which they testify to as having taken place when he was present. He also testifies that Frank Hoysradt was not present at any of the conferences; that he furnished no data from which he, Judge Cadman, or Mr. Jordan drew any of the papers, and in many other respects flatly contradicts the testimony both of Frank Hoysradt and Isaac B. Felts.

J. W. Hoysradt also testifies that on Monday, the 13th day of June, 1881, he, Mr. Felts, and Mr. Green, having looked this property over on the Saturday previous, directed E. B. Sturges, Esq., his counsel, to make a deed to Mr. Felts for the surface of what is known in the testimony as the "Gore" piece. While viewing this property on the 11th of June Mr. Hoysradt states that Mr. Felts informed him
30 that on a knoll near the "Gore" piece stood his grandfather's house, and that his (Felt's) mother had planted some trees there and he would like some day to build a house on that site. Mr. Hoysradt said, "Very well; I will deed it to you," and he instructed Mr. Sturges to make a deed to Mr. Felts for the surface and the "Gore" tract, which was accordingly done on the 13th of June, 1881. It was at that time also discovered that the reservation in the deed with reference to the house that Mr. Felts lived in and the other house that the houses only were reserved and not the land. This was also corrected and included in the deed from Mr. Hoysradt to Mr. Felts, dated June 13th, 1881. In addition to this Mr. Hoysradt testifies that in September, 1881, Mr. Felts made an offer to him to purchase his interest in this property and pay him $60,000 for the same, which he declined; that on the first day of April, 1882, Mr. Felts called on him at his office, in Hudson, N. Y., and asked him to name a price he would sell his interest in this property for. Mr. Hoysradt states that he informed Mr. Felts that he did not care to do it; that then Mr. Felts wanted him to name a price he would give or take, which Mr. Hoysradt declined to do, but asked Mr. Felts to name a price he would give or take and he would consider it; that Mr. Felts flew into a passion and said he was going home and was to commence proceedings for a division of the property; that on the 14th of January, 1885, N. Taylor, Esq., attorney for Mr. Felts, made him an offer in behalf of Isaac Felts of $125,000.00 for his interest in this property, which he also declined.

Coupled with the offers made in this case the foregoing is a resume of the main facts in this case as developed by the
31 testimony. It is true a number of witnesses besides those already referred to herein were sworn, but their testimony is only important as to certain details, which are in many instances

only slightly corroborative of the witness- of the plaintiff and defendant. We do not consider this testimony of such vital importance to the disposition of this rule as to make a review of it necessary. The main features of the defence in this case and the reasons upon which they rely to substantiate the rule in this case are as follows:

1st. Whether the contract between Hoysradt and Felts was made on the 8th day of June, 1881, or not until the next day. We are emphatically of the opinion that the contract or agreement was not made until the 9th day of June, 1881; that although the matter was talked of between the parties on the 7th and 8th days of June, 1881, yet there was no final agreement or conclusion reached before the morning of June 9th, 1881, when the papers were signed, acknowledged, and delivered to Albert Hoysradt to be held in escrow.

2nd. Whether Frank Hoysradt was authorized to act for J. W. Hoysradt in making the arrangements with Isaac B. Felts, the defendant.

From the overwhelming testimony of J. W. Hoysradt, Judge Cadman, and Albert Hoysradt and the manner in which they contradict Frank Hoysradt, and from his own testimony and the manner in which he acted, and also the reasons which he alleges prompted and actuated him in the parts which he alleges he figured so
32 prominently in this transaction, we are disposed to place but very little credence in his testimony, and find that he was not acting for J. W. Hoysradt in this transaction, and that the contract between Hoysradt and Felts was not made through him.

3rd. Whether the contract made was for a loan and the securing of the same by pledges satisfactory to J. W. Hoysradt, or was it for an absolute transfer of any part of the property?

From all the evidence in the case we find that Isaac B. Felts made an absolute and unconditional deed for a one-half interest in this property to J. W. Hoysradt on the 9th day of June, 1881, for a consideration of $20,000.00 and a bond and mortgage on the remaining undivided one-half to secure Mr. Hoysradt for the sum of about twenty thousand dollars which Mr. Hoysradt agreed to advance for Mr. Felts to pay off certain liens, &c., which were against his property, one of which liens an execution had been issued upon, and the real estate of the defendant was taken into execution and was advertised to be sold two days later than this contract or agreement, viz., June 11, 1881.

4th. Whether or not there was a conspiracy to defraud Isaac B. Felts. The only evidence in the case that in any manner tends to show a conspiracy, in our opinion, is the testimony of Frank Hoysradt. As we have previously stated, we place very little credence in the testimony of Frank Hoysradt, and from the manner in which his testimony has been contradicted and his own admissions as to the manner in which he acted in this whole transaction we can-
33 not find from the testimony that there was a conspiracy to defraud Isaac B. Felts.

We are asked by the defendant's counsel to decide whether or not an act approved the 8th day of June, A. D. 1881, P. L. 1881,

p. 84, being "An act relating to and defining defeasances in this Commonwealth," is invalid and inoperative because it is in violation of the provisions contained in section X, paragraph 1, of the Constitution of the United States, forbidding any State to pass a law impairing the obligation of contracts.

This act, as we construe it, does not impair the obligation of contracts. It simply provides that when such contracts are made after its passage no deed for real estate absolute upon its face shall have the effect of reducing it to a mortgage unless the defeasance is made at the time the deed is made, and in writing, signed, sealed, acknowledged, and delivered by the grantee in the deed to the grantor, and is recorded, &c. How this impairs the obligation of a contract we are at a loss to see. It simply provides that after its passage to reduce a deed for real estate absolute upon its face to a mortgage certain formalities must be complied —. This, we believe, is within the power of the Legislature and in nowise conflicts with the provisions of the section of the Constitution of the United States above referred to.

We do not contend for an instant that prior to the passage of the act of 8th of June, 1881, P. L., 84, such defeasible character in a conveyance could be shown by oral testimony; but we find this deed was not only made, but was delivered, subsequent to the passage of that act. Therefore the rule laid down in Sweetzer's Appeal,
34 21 P. F. S., 264, and in other cases need not be followed.

We have studied this case carefully and have weighed the testimony adduced by the defendant and the plaintiff, and after a careful consideration of the same we find that there is a preponderance of testimony in favor of the plaintiff is this case.

It is true there is a conflict in the testimony; but, viewing it all together and comparing the many contradictions, we repeat there is a preponderance of the testimony in favor of the plaintiff.

And now, to wit, April 23rd, 1888, the rule to show cause why the judgment in this case should not be opened and defendant let into a defence is discharged.

JOHN F. CONNOLLY,
Add'l Law Judge.

35 Now, May 4th, 1888, defendant appeals to the supreme court for the eastern district of Pennsylvania, and files affidavit that same is not taken for delay, and files bond in $28,000, with Isaac B. Felts, E. Merrifield, and Thomas Ford sureties, approved 4th May, 1888, by Alfred Hand, president judge.

36 In the Supreme Court of Pennsylvania in and for the Eastern District.

No. 75. July Term, 1888.

Docket Entries.

John F. Scragg; W. H. Jessup.

Appeal of Isaac B. Felts from decree in case of Jacob Hoysradt *vs.* said appellant. 75.

Surwrit of certiorari to the court of common pleas for the county of Lackawanna, No. 250, October term, 1886.

Returnable the fourth Monday of February, 1889.
Exit May 7, 1888.
February 25, 1889. Record returned and filed.
Eo die. Assignments of error filed.
February 27, 1889. Argued.
March 18, 1889. The order discharging the rule is affirmed and the appeal dismissed at the costs of appellant.
Per curiam.

Assignment of Error.

It is respectfully submitted that the court erred in refusing an issue and discharging the rule to open the judgment entered July 14, 1886.

Opinion of Supreme Court.

Per curiam:

There is no occasion for our discussing this vast mass of testimony. The opinion of the learned judge below refusing to open the judgment is so full, clear, and satisfactory that we affirm the case for the reasons given by him.

The order discharging the rule is affirmed and the appeal dismissed at the costs of the appellant.

A true copy from the record.

Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.

In testimony whereof I have hereunto set my hand and the seal of said court, at Philadelphia, this third day of April, 1889.

CHAS. S. GREENE,
Prothonotary.

[Endorsed:] No. —. January term, 188–. Supreme court.

Costs:

Tax and writ---------- $
Prothonotary----------
Attorney----------

Amount---------- $

37 In the Supreme Court of Pennsylvania for the Eastern District.

JACOB HOYSRADT
v.
ISAAC B. FELTS. } No. 250.

Surwrit of appeal to the court of common pleas for the county of Lackawanna, of October term, 1886.

Issue writ of appeal to the court of common pleas for the county Lackawanna to remove record and proceedings in a certain action in said court, No. 250, October term, 1886, in which the said Jacob Hoysdradt was plaintiff and the said Isaac B. Felts was defendant. Returnable to next term, *sec. reg.*

JOHN T. SCRAGG,
Attorney for Isaac B. Felts.

To Charles S. Greene, proth'y sup. c't.

Filed May 7, 1888.

Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.

I certify that the above is a true and correct copy of the præcipe filed in the above-entitled case.

In testimony whereof I have hereunto set my hand and the seal of said court, at Philadelphia, this 18th day of October, A. D. 1889.

CHAS. S. GREENE,
Prothonotary.

38 In the Supreme Court of Pennsylvania in and for the Eastern District.

Copy of Bond.

No. —. January Term, 188–.

JACOB HOYSDRADT
vs.
ISAAC B. FELTS. } No. 250. October Term, 1886.

Surwrit of certiorari to the court of common pleas for the county of Lackawanna.

Now, May 4, 1888, Isaac B. Felts, the defendant above named, appeals to the supreme court for the eastern district of Pennsylvania from the definitive decree of the above-named court in the above-stated case.

ISAAC B. FELTS.

LACKAWANNA COUNTY, *ss:*

We, Isaac B. Felts, the defendant above named, Edward Merrifield, both of the county of Lackawanna, Thomas Ford, of the

county of Luzerne, do severally acknowledge ourselves to owe and be indebted to Jacob Hoysdradt, the plaintiff above named, in the sum of twenty-eight thousand dollars, being the amount of the debt, interest, and cost in the above-stated judgment, to be levied of our goods and chattels, lands and tenements, respectively, and to be void upon condition that the said Isaac B. Felts shall prosecute his appeal with effect, and, in case the said judgment is affirmed or appeal be discontinued or *non-prossed*, pay the debt and interest and pay all costs that have accrued or shall hereafter accrue upon the said appeal, including the return of the record to said court, with the remittitur.

ISAAC B. FELTS.
E. MERRIFIELD.
THOS. FORD.

Filed May 7, 1888.

Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.

I certify that the above is a true and correct copy of the bond filed in the above-entitled case.

In testimony whereof I have hereunto set my hand and the seal of said court, at Philadelphia, this 18th day of October, 1889.

CHAS. S. GREENE,
Prothonotary.

[Endorsed:] No. —. January term, 188–. Supreme court.

Costs:

Tax and writ ---------- $
Prothonotary ----------
Attorney ----------

Amount ---------- $

39 In the Supreme Court of the United States.

ISAAC B. FELTS, Plaintiff in Error,
v.
JACOB W. HOYSRADT, Defendant in Error.

Assignment of Error.

It is respectfully submitted that the learned supreme court of the State of Pennsylvania erred in ruling that the act of Assembly of Pennsylvania entitled "An act relating to and defining defeasances in this Commonwealth," approved the 8th day of June, A. D. 1881, was not in violation of the Constitution of the United States.

Respectfully submitted,

A. RICKETTS,
Counsel for Pl'ff in Error.

40 (Copy.)

EASTERN DISTRICT OF PENNSYLVANIA, *sct:*

Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.

The Commonwealth of Pennsylvania to the justices of the common pleas court for the county of Lackawanna, Greeting:

Whereas, by virtue of our writ of certiorari from our supreme court of Pennsylvania for the eastern district, returnable in the same court on the fourth Monday of February, in the year of our Lord one thousand eight hundred and eighty-nine, a record was brought into the same court upon appeal by Isaac B. Felts from your decree made in the matter of *in case of* Jacob Hoysdradt *vs.* said appellant, to No. 250, October term, 1886, and it was so proceeded in our said supreme court that the following decree was made, to wit:

The order discharging the rule is affirmed and the appeal dismissed at the costs of appellant; and the record and proceedings thereupon, and all things concerning the same, were (agreeably to the directions of the act of Assembly in such cases made and provided) ordered by the said supreme court to be remitted to the court of common pleas for the county of Lackawanna aforesaid, as well for execution or otherwise as to justice shall appertain: Wherefore we here remit you the record of the decree aforesaid and the proceedings thereupon in order for execution or otherwise as aforesaid.

Witness the Honorable Edward M. Parson, doctor of laws, chief justice of our said supreme court, at Philadelphia, the 19th day of March, in the year of our Lord one thousand eight hundred and eighty-nine.

CHAS. S. GREENE,
Prothonotary.

41 [Endorsed:] 250. Oct. T., '86. C. P., Lackawanna. No. 75. July term, 1888. Supreme court. In the matter of the appeal of Isaac B. Felts. Remittitur. Att'y, 3.00; pro., 7.25; rem., .75. W. H. Jessup.

I certify that the within and foregoing is a true and correct copy of the remittitur in the above-entitled case.

In testimony whereof I have hereunto set my hand and the seal of said court, at Philadelphia, this 18th day of October, A. D. 1889.

{ Seal of the Supreme Court of Pennsylvania, Eastern District, 1776. }

CHAS. S. GREENE,
Prothonotary.

42 UNITED STATES OF AMERICA, }
State of Pennsylvania, } *ss:*

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania, eastern district, do hereby certify that the foregoing record, pages 1 to —, inclusive, is a true and faithful copy of the record and proceedings of the supreme court of the State of Pennsylvania

eastern district, in a certain suit therein pending, wherein Isaac B. Felts was appellant and Jacob W. Hoysradt was appellee.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said supreme court of the State of Pennsylvania, eastern district, at Philadelphia, the 19th day of October, 1889, and in the one hundred and fourteenth year of the Independence of the United States.

{ Seal of the Supreme Court of Pennsylvania, Eastern District, 1776. }

CHAS. S. GREENE,
Prothonotary of the Supreme Court of Pennsylvania, Eastern Dist.

Endorsed on cover: Pennsylvania supreme court. No. 1454. Isaac B. Felts, plaintiff in error, *vs.* Jacob W. Hoysradt. Filed October 21, 1889.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889,
No. 1454.

ISAAC B. FELTS, - - - *Plaintiff in Error.*

vs.

JACOB W. HOYSRADT, - - *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

A. RICKETTS,
Counsel for Plaintiff in Error.

LAMBERT, PRINT, 104 PUBLIC SQUARE.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889,
No. 1454.

ISSAC B. FELTS, - - - *Plaintiff in Error.*

vs.

JACOB W. HOYSRADT, - - *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

Upon motion to dismiss the writ in this case for want of jurisdiction, as the record shows that no Federal question was involved in the judgment of the Supreme Court of Pennsylvania, nor in the trial court.

And also to open the record and affirm the judgment, upon the ground that it is manifest, the writ was taken for delay, and needs no further argument.

BRIEF OF PLAINTIFF IN ERROR.

It would be difficult to present a case, more plainly and expressly within the jurisdiction of the Court, than the present. The Act of Assembly of the State of Pennsylvania, the validity of which is brought in question in

this case, is printed in the brief of defendant in error at page 4. The Record p. 8, shows that objection to the validity of this Act, on the ground that it was in violation of the provision contained in section X., paragraph 1, of the Constitution of the United States, forbidding any State to pass a law impairing the obligation of contracts, was promptly taken in the County Court where the case originally arose.

The record at pp. 14 and 15 also shows, that the learned Judge of that Court understood that question to be properly presented before him, and that he made his decision in favor of the validity of the Act.

And it further shows, that he made the validity of the Act, and its effect in changing the law as theretofore existing, the express ground upon which he ruled the case against the plaintiff in error. We repeat by itself, the language of the Court as to this, which was as follows, "We do not contend for an instant, that prior to the pass-"age of the Act of 8th June, 1881, *P. L. 84*, such defeas-"ible character in a conveyance could not be shown "by oral testimony; but we find this deed was not "only made, but was delivered, subsequent to the passage "of that Act. Therefore the rule laid down in *Sweetser's* "*Appeal, 21 P. F. S., 264*, and in other cases, need not be "followed."

We are at a loss to imagine, how a Court could more plainly state the ground of its decision of a case than this.

Upon appeal to the Supreme Court, that Court simply affirmed this ruling, without giving any additional or other reason. And thereupon the present writ of error was taken.

The jurisdiction is therefore too plain and manifest for any one to mistake it, and we submit, that the motions in this case are really merely to affirm, and therefore cannot be entertained.

And we repeat here, the decisions already cited in No. 1453 of this term, showing the settled practice of the Court in this respect.

In *Whitney v. Cook, 99 U. S., 607*, the language of the Court is,

"This is a motion to affirm only. Our amended Rule "6 allows a motion to affirm to be united with a "motion to dismiss. This implies that there shall "appear on the record at least some color of right to a "dismissal. That is not pretended in this case. *We are*, "*therefore, compelled to deny this motion.*"

In *Ackley v. Hall, 106 U. S., 428*, the Court says, "There is "not in this case such a color of right to a dismissal as to make it proper for us to consider the motion to affirm. "*Whitney v. Cook, 99 U. S., 607.*"

Then again in *Davies v. Corbin, 113 U. S., 687*, the Court declares, "The original rule allowing a motion to affirm "to be united with a motion to dismiss was promulgated "May 8, 1876, 91 U. S., VII., and in *Whitney v. Cook, 99* "*U. S., 607*, decided during the October Term, 1878, it was "ruled that the motion to affirm could not be entertained, "unless there appeared on the record at least some color "of right to a dismissal. This practice has been steadily "adhered to ever since, and, in our opinion, prevents our "entertaining the motion to affirm in this case. *That* "*motion is consequently denied.*"

And in *Gaines v. Corbin, id.*, "*These motions are denied.* "There is not sufficient color of right to a dismissal, to "make it proper for us to entertain a motion to affirm."

But advantage is taken of a want of exact precision on the part of the learned Judge in expressing himself in part of his opinion, to claim that the decision of the case was made on a ground independent of the question of the validity of the said Act of Assembly. This we think is misleading, for the reason, that as we understand it, the ruling of the Court was not of the *case* on any other

ground than the Act of Assembly, but a ruling that the case was within the Act of Assembly, and controlled by its operation, and an overruling of the defence made by the plaintiff in error, that the case was independent of, and without, the operation of said Act. Plaintiff in error alleged and presented evidence to show, that the land in question was very valuable, that he had for at least a dozen years prior to the transaction in question held it to be worth not less than half a million dollars; that he was indebted in 1881 to the amount of nearly forty thousand dollars, one item of which was a mortgage and judgment in favor of the Delaware, Lackawanna and Western R. R. Company amounting to $24,384.52; that defendant in error proposed to lend him, and did lend him, the necessary amount to pay off this and all other claims, and consolidate his indebtedness in the one loan from defendant in error; that as security for such loan, defendant in error took an assignment of the said lien of the D. L. & W. R. R. Co. for $24,384.52, and an additional bond and mortgage for $20000.00 dated June 9th, 1881. That although thus taking full securities for the money loaned, defendant in error had also induced plaintiff in error to give him as additional security, a deed absolute on its face, of the same date as the mortgage to wit, June 9th, 1881, and naming the same amount as consideration to wit $20000.00, upon the special ground, that in case of the death of plaintiff in error, there would be about forty collateral heirs, and hindrance would undoubtedly arise in the collection regularly of the royalties which were to be collected in payment of the loan, and such hindrance was to be prevented by placing in the hands of defendant in error this conveyance showing his absolute right to collect these royalties; that defendant in error expressly agreed to hold this deed simply as additional security thus for the loan, and to reconvey when the loan was repaid. And also,

that at the time of this arrangement, neither of the parties knew of the above mentioned Act of Assembly which was approved on the 8th day of June, 1881, the very day on which the said agreement was made at Hudson, in the City of New York, although the papers were not executed until the 9th. He also proposed to show that the getting this deed in this form was the result of a conspiracy between defendant in error and a brother of his, to so get it, in the expectation that plaintiff in error, who is their bachelor uncle, would not live out the five years, the time for which the loan was to run. That after this Act of Assembly became known, then defendant in error claimed this deed as evidence of an absolute sale, and that he would apply the royalties he received as owner to himself and not as payment on the loan. And that accordingly, although having received the full amount in repayment, he nevertheless entered the bond for $20000.00 in judgment and issued the execution, which caused the present proceeding. Very considerable testimony was presented in support of the facts as thus alleged, all of which, was taken down under objection by defendant in error that it was incompetent since the said Act of June 8th, 1881. And the ruling of the Court, was that this objection was well taken, and that the attempt of plaintiff in error thus to show that his case was not within the Act, was not successful. As the learned Judge says, there was decided conflict in the testimony, and plaintiff in error therefore requested issues of fact to be made up and tried by a jury, to have the facts properly ascertained by a competent tribunal which could have the witnesses before them, and thus be able to judge from their manner and conduct, as well as their words. But this was denied, and as we understand it, the whole of the evidence offered by plaintiff in error, instead of not being rejected as suggested by the brief of defendant in error,—the whole of it was wholly rejected, as not being sufficient

to take the case out of the operation of the said Act. The weighty evidence of the papers,—the securities for the loan,—and the deed being of the same date as the mortgage, and for precisely the same consideration, which was not a tenth of the actual value of the property,—the fact that plaintiff in error remained in the possession of the property the same as before,—these and many similar irresistible facts, were all swept aside as unworthy of regard, just as the brother of the defendant in error, from whom a partial confession was obtained, as well as plaintiff in error himself, were with one stroke of the judicial pen declared guilty of perjury.

Unfortunately for us, this part of the case cannot be presented here for review, and we only present this very brief statement of it to show to what the language of the Court really applies, and that it was not a deciding of the *case* outside the Act of Assembly in question, but on the contrary was a refusing to permit a defence outside of the said Act.

We submit that the question here presented is by no means frivolous.

The Act of Assembly in question comes directly within the principle and distinction so clearly expressed by Chief Justice Marshall in *Sturges v. Crowninshield, 4 Wheat., 122.* to wit, it does not declare such contracts as that made by these parties unlawful and void, so that one in making them enters into no obligation; on the contrary it permits them to be made, and recognizes them as valid in so far as to enable the grantee to take a transfer of the property, and then at once releases him from the obligation of the contract into which he has entered, and which he has used as a means to obtain that transfer. It makes his obligation a mere matter of his own will and honesty, instead of a matter of law.

But in the case above mentioned, C. J. Marshall says, "A contract is an agreement in which a party undertakes

"to do or not to do a particular thing. The law binds "him to perform his undertaking, and this is of course the "obligation of his contract." * * * "Any law which "releases a part of the obligation must in the literal "sense of the word, impair it. Much more must a law "impair it which makes it totally invalid, and entirely "discharges it."

In *Von Hoffman v. Quincy, 4 Wall., 535*, it is said, "The "ideas of validity and remedy are inseparable, and both "are parts of the obligation, which is guaranteed by the "constitution against invasion. The obligation of the "contract is the law which binds the parties to perform "their agreement." Citing *Sturges v. Crowninshield supra*

And then further, "No attempt has been made to fix "definitely, the line between alterations of the remedy "which are to be deemed legitimate, and those which, "under the form of modifying the remedy, impair sub-"stantial rights. Every case must be determined upon "its own circumstances. Whenever the result last men-"tioned is produced, the Act is within the prohibition of "the Constitution, and to that extent void."

The same principles are reasserted in *Walker v. Whitehead, 16 Wall., 314.*

And these cases have since been frequently approvingly cited.

The best test perhaps, is the practical one; and the practical operation of this Act as construed and applied by the Court to this case, illustrates its objectionable character very clearly. That the parties were only treating about a loan, and that only a loan and not a sale was that concerning which they contracted, was clearly shown by the fact that bonds and mortgages were given in the ordinary form to secure every dollar which defendants in error furnished. Upon the face of the papers, the deed could only therefore be justly regarded as an additional security. According to the evidence produced by peti-

tioner, which however was rejected by the Court, it was merely given for a specific purpose to meet a specific contingency, which now cannot arise, the time being past and the loan being now fully repaid. Yet the ruling of the Court is, that by the operation of this Act, the defendant in error can hold this property as absolute owner by virtue of this conveyanoe thus obtained, although the consideration mentioned in deed is not even a tenth of the real value of the land. And not only this, but that he can go on and collect the bond and mortgage made at the same time and for the same amount as the consideration mentioned in the deed, as a subsisting debt in addition to the conveyance. Thus the Act not only violates the contract the parties did make, but goes further and substitutes a contract they never did make.

We submit therefore, that the case presented to the Court is one calling for careful consideration.

Respectfully submitted,

A. RICKETTS,

Counsel for Plaintiffs in Error.

IN THE

SUPREME COURT

OF THE UNITED STATES.

WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

ISAAC B. FELTS, *Plaintiff in Error,* *vs.* JACOB W. HOYSRADT, *Defendant in Error.*	No. 1454, October Term, 1889.

BRIEF SUR.

Motion to Dismiss for Want of Jurisdiction, and also to Affirm.

W. H. JESSUP,
Counsel for Defendant in Error.

BRIEF SUR.

W. H. JESSUP.

ISAAC B. FELTS, *Plaintiff in Error,* *vs.* JACOB W. HOYSRADT, *Defendant in Error.*	In the Supreme Court of the United States, No. 1454, Oct. Term, 1889. Writ of error to the Supreme Court of the State of Pennsylvania.

BRIEF SUR.

Motion to dismiss for want of jurisdiction and also to affirm.

ISAAC B. FELTS, *Plaintiff in Error,* *vs.* JACOB W. HOYSRADT, *Defendant in Error.*	In the Supreme Court of the United States. No. 1454, Oct. Term, 1889. Writ of error to the Supreme Court of the State of Pennsylvania.

And now, to wit, December 16, 1889, W. H. Jessup, Esquire, counsel for the above named defendant in error, having given three weeks' personal notice to A. Ricketts, Esquire, counsel for the above named plaintiff in error, of his intention to make this motion at this time, and having served a printed copy of his brief upon such motion upon

said counsel for the plaintiff in error at least three weeks prior to this duty,

MOVES THE COURT,

(*a.*) To dismiss the writ in this case for want of jurisdiction, as the record shows that no federal question was involved in the judgment of the Supreme Court of Pennsylvania, nor in the trial court.

(*b.*), And also to open the record and affirm the judgment upon the ground that is manifest, the writ was taken for delay and needs no further argument.

W. H. JESSUP,
Counsel for Defendant in Error.

STATEMENT OF CASE.

On the 14th day of July, 1886, an amicable action of Debt upon Bond was instituted in the Court of Common Pleas of Lackawanna County, Pennsylvania, by Jacob W. Hoysradt, the defendant in error, against Isaac B. Felts, the plaintiff in error, and the same day by virtue of a warrant of attorney contained in said bond, judgment was confessed by Martin R. Kays, Esquire, who appeared for the defendant, for the penal sum mentioned in said bond of $40,000. Real debt $24,185.62.

On the 30th day of August, 1886, a rule was granted, upon application of the defendant, to show cause why the judgment should not be opened and defendant let into a defense.

1888, April 23, by opinion of Hon. John F. Connolly, Additional-Law-Judge, rule is discharged.

The defense set up by the plaintiff in error on the hearing of this rule (which was heard before the Judge without a jury), was, that on the 9th day of June, 1881, he conveyed an undivided one-half of about one hundred acres of coal land for the consideration mentioned, of $20,000, to Jacob W. Hoysradt, the defendant in error, and on the same day executed the bond in suit, which was secured by a mortgage upon the other undivided half of the same property, also for the sum of $20,000. That the deed though absolute on its face was simply to secure the $20,000. That the contract for this loan was made, June 8, 1881, though the deed and mortgage were executed the 9th and delivered the 10th. And that he had repaid and tendered the whole amount due upon such loan and demanded a reconveyance of the property.

On the 8th of June, 1881, the following act of the Legislature of Pennsylvania was approved and became a law:

AN ACT

Relating to and defining defeasances in this Commonwealth:

"SECTION 1. *Be it enacted, &c.*, That no defeasance to any deed for real estate, regular and absolute upon its face, made after the passage of this Act, shall have the effect of reducing it to a mortgage, unless the said defeasance is made at the time the deed is made, and is in writing, signed, sealed, acknowledged and delivered by the grantee in the deed to the grantor, and is recorded in the office for recording deeds and mortgages in the county wherein the said lands are situated, within sixty days from the execution thereof; and such defeasance shall be recorded and indexed as mortgages by the Recorder."

Approved June 8, 1881.

The plaintiff below denied that the contract was made on the 8th of June, 1881, and claimed that the deed was an absolute one for the consideration of $20,000, and that there was due and upaid upon the bond in suit the sum of $24,185.62 and interest.

A large amount of testimony was taken, and Judge Connolly discharged the rule by an opinion which is published in the appendix to this brief, page 21, and this opinion was affirmed by the Supreme Court of Pennsylvania in a *per curiam* opinion which is also published on page 38.

The following extract from the opinion of the Trial Judge will show that the case was decided upon its merits independent of the statute of Pennsylvania relating to defeasances, and that no federal question was involved in such decision.

"The main features of the defense in this case, and the reasons upon which they rely to substantiate the rule in this case, are as follows:

"1st. Whether the contract between Hoysradt and Felts was made on the 8th day of June, 1881, or not until the next day. We are emphatically of the opinion that the contract or agreement was not made until the 9th day of June, 1881. That although the matter was talked of between the parties on the 7th and 8th days of June, 1881, yet there was no final agreement or conclusion reached before the morning of June 9th, 1881, when the papers were signed, acknowledged and delivered to Albert Hoysradt to be held in escrow.

"2d. Whether Frank Hoysradt was authorized to act for J. W. Hoysradt in making the arrangements with Isaac B. Felts, the defendant?

"From the overwhelming testimony of J. W. Hoysradt, Judge Cadman and Albert Hoysradt, and the manner in which they contradict Frank Hoysradt, and from his own testimony, and the manner in which he acted, and also the reasons which he alleges prompted and actuated him in the parts which he alleges he figured so prominently in this transaction, we are disposed to place but very

little credence in his testimony and *find that he was not acting for J. W. Hoysradt* in this transaction, and that the contract between Hoysradt and Felts was not made through him.

"3d. Whether the contract made was for a loan and the securing of the same by pledges satisfactory to J. W. Hoysradt, or was it for an absolute transfer of any part of the property?

"From all the evidence in the case we find that Isaac B. Felts made an absolute and unconditional deed for a one-half interest in this property to J. W. Hoysradt on the 9th day of June, 1881, for a consideration of $20,000, and a bond and mortgage on the remaining undivided one-half to secure Mr. Hoysradt for the sum of about twenty thousand dollars, which Mr. Hoysradt agreed to advance for Mr. Felts to pay off certain liens, &c., which were against his property, one of which liens an execution had been issued upon and the real estate of the defendant was taken into execution and was advertised to be sold two days later than this contract or agreement, viz.: June 11th 1881.

"4th. Whether or not there was a conspiracy to defraud Isaac B. Felts?

"The only evidence in the case that in any manner tends to show a conspiracy in our opinion is the testimony of Frank Hoysradt. As we have previously stated, we place very little credence in the testimony of Frank Hoysradt, and from the manner in which his testimony has been contra-

dicted, and his own admission as to the manner in which he acted in this whole transaction, we cannot find from the testimony that there was a conspiracy to defraud Isaac B. Felts.

"We are asked by the defendant's counsel to decide whether or not an Act approved the 8th day of June, A. D. 1881, P. L. 1881, p. 84, being "An Act relating to and defining defeasances in this Commonwealth," is invalid and inoperative, because it is in violation of the provisions contained in section X, paragraph I, of the Constitution of the United States, forbidding any State to pass a law impairing the obligation of contracts. This Act, as we construe it, does not impair the obligation of contracts, it simply provides that when such contracts are made after its passage no deed for real estate absolute upon its face shall have the effect of reducing it to a mortgage unless the defeasance is made at the time the deed is made, and in writing, signed, sealed, acknowledged and delivered by the grantee in the deed to the grantor, and is recorded, &c. How this impairs the obligation of a contract we are at a loss to see; it simply provides that after its passage to reduce a deed for real estate absolute upon its face to a mortgage, certain formalities must be complied with. This we believe is in the power of the Legislature and in nowise conflicts with the provisions of the section of the Constitution of the United States above referred to.

"We do not contend for an instant, that prior

to the passage of the Act of 8th of June, 1881, P. L., p. 84, such defeasible character in a conveyance could not be shown by oral testimony. But we find that this deed was not only made but was delivered subsequent to the passage of that Act, therefore the rule laid down in *Sweetzer's Appeal*, *21, P. F. S., 264*, and in other cases need not be followed.

"We have studied this case carefully and have weighed the testimony adduced by the defendant and the plaintiff, and after a careful consideration of the same we find that there is a preponderance of testimony in favor of the plaintiff in this case. It is true there is a conflict in the testimony, but viewing it altogether and comparing the many contradictions we repeat there is a preponderance of the testimony in favor of the plaintiff.

"And now, to wit, April 23d, 1888, the rule to show cause why the judgment in this case should not be opened and the defendant let into the defence is discharged."

The opinion of the Supreme Court of Pennsylvania affirming the judgment is as follows:

OPINION OF THE SUPREME COURT OF PENNSYLVANIA.

Appeal of ISAAC B. FELTS from the Court of Common Pleas of Lackawanna County. } No. 75, July Term, '88.

Filed March 18, 1889.

PER CURIAM:

There is no occasion for our discussing this vast mass of testimony. The opinion of the learned judge below refusing to open the judgment is so full, clear and satisfactory that we affirm the case for the reasons given by him.

The order discharging the rule is affirmed, and the appeal dismissed at the cost of the appellant.

STATE OF PENNSYLVANIA, } ss.
EASTERN DISTRICT. }

I, Charles S. Greene, Prothonotary of the Supreme Court of Pennsylvania, in and for the Eastern District, do hereby certify that the above and foregoing is a true copy of the OPINION in the

above entitled cause, so full and entire as appears of record in said Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Philadelphia, this 13th day of November, A. D. 1889.

LEWIS C. GREENE,

[SEAL.] *Pro-prothonotary.*

BRIEF OF ARGUMENT.

The only federal question attempted to be raised by the plaintiff in error was, that the Act of the Legislature of Pennsylvania approved June 8, 1881, was unconstitutional and void, as being in conflict with Sec. 10, Art. I of the Constitution of the United States, which prohibits any State from passing a law impairing the obligation of contracts.

But the rule to open the judgment was discharged because there was no such contract entered into, as was claimed by the plaintiff.

No evidence was rejected by the Court in consequence of the Act of Assembly complained of; but upon the whole evidence submitted by the plaintiff in error, the Judge found against the parol contract set up by him.

His judgment was independent of the Act in question, and upon the ground that the evidence of

the plaintiff in error contradicted it as it was, by that of the defendant in error failed to satisfy him that the deed for the undivided half of the land was ever intended to be a mortgage or security for a loan.

The fact that the Trial Judge, after finding the facts against the plaintiff in error, was also asked by him to pass upon the constitutionality of the Act in question, and that he did give his opinion in favor of its constitutionality does not affect the judgment.

Nor did it affect or control the decision of the Court of last resort, as their *per curiam* opinion affirms the judgment upon the opinion of the Court below.

We have then a case where all evidence offered by a party was received. considered and passed upon by the Trial Court, and this Court is now asked to pass upon the constitutionality of an Act of Assembly under which no evidence offered was excluded, and which did not enter into nor affect the judgment.

That it has no jurisdiction for any such purposes, the cases abundantly show.

A reference to a few of them is here made:

In 1836, on a motion to dismiss for want of jurisdiction, this Court say in *Crowell vs. Randall* (10 Pet, 398)—

"The period seems now to have arrived in which the Court should upon a full review of all

the cases with a view to close if possible all future controversy on the point, re-affirm the interpretation, which they have constantly maintained. It is that to bring a case within the twenty-fifth section of the judiciary act, it must appear on the face of the record—

1st. That some one of the questions stated in that section did arise in the State Court.

2d. That the question was decided by the State Court as required in the same section.

3d. That it is not necessary that the question should appear on the record to have been raised, and the decision made in direct and positive terms, *ipsissimis verbis;* but that it is sufficient if it appears by clear and necessary intendment that the question must have been raised and must have been decided in order to have induced the judgment.

4th. That it is not sufficient to show that a question might have arisen or been applicable to the case, unless it is farther shown on the record that it did arise and was applied by the State Court to the case."

In 1842 the subject was again before the Court, in

Armstrong vs. Treasurer of Athens County, 16 *Pet.*, 281,

and it is said—

"In order to give this Court jurisdiction under the 25th section of the Act of 1789, it must appear

on the record itself to be one of the cases enumerated in that section; and nothing out of the record certified to this Court can be taken into consideration. This must be shown—

First, Either by express averment, or by necessary intendment in the pleadings of the case.

Or, secondly, By the direction given by the Court and stated in the exception.

Or, thirdly, When the proceeding is according to the law of Louisiana, by the statement of facts and of the decision as usually made in such cases by the Court.

Or, fourthly, It must be entered on the record of the proceedings in the Appellate Court, in cases where the record shows that such a point may have arisen and been decided, that it was in fact raised and decided, and this entry must appear to have been made by the order of the Court, or by the presiding judge by order of the Court and certified by the clerk as a part of the record in the State Court.

Or, fifthly, In proceedings in equity it may be stated in the body of the final decree of the State Court from which the appeal is taken to this Court.

Or, sixthly, It must appear from the record that the question was necessarily involved in the decision, and that the State Court could not have given the judgment or decree which they passed without deciding it.

We are not aware of any other mode in which the judgment or decree of a State Court can lawfully be brought before us; and we have stated them particularly in order to prevent in future the difficulties and discrepancies which have so often arisen on this subject."

In 1871, in the case of

Klinger vs. State of Missouri, 13 Wallace, 257,

Justice Bradley says, p. 263:

"The rules which govern the action of this Court in cases of this sort are well settled. Where it appears by the record that the judgment of the State Court might have been based either upon a law which would raise a question of repugnancy to the constitution, laws, or treaties of the United States, or upon some other independent ground, and it appears that the Court did, in fact, base its judgment on such independent ground, and not on the law raising the federal question, this Court will not take jurisdiction of the case, even though it might think the position of the State Court an unsound one. But when it does not appear on which of the two grounds the judgment was based, then if the independent ground on which it might have been based was a good and valid one, sufficient of itself to sustain the judgment, this Court will not assume jurisdiction of the case; but if such independent ground was not a good and valid one it will be presumed that the State Court based its

judgment on the law raising the federal question, and this Court will then take jurisdiction."

Citing—

Maguire vs. Tyler, 8 Wallace, 650.
Neilson vs. Lagow, 12 How., 110.
Railroad Co. vs. Rock, 4 Wall., 177.
Railroad Co. vs. McClure, 10 Wall., 511.
Insurance Co. vs. Treasurer, 11 Wall., 204.
Crowell vs. Randall, 10 Pet., 368.
Suydam vs. Williamson, 20 How., 427.
Williams vs. Oliver, 12 How., 123."

In 1871, in the case of

Kennebec Railroad vs. Portland Railroad, 14 Wallace, 23,

Justice Miller says, p. 25:

"As the record without the opinion does not show that such a question was decided, we have examined the opinion with the case, and have felt bound to look to the whole of it, as well as that part relied on by the plaintiff in error; and though the matter which the plaintiff now alleges was one of the principal questions in the case, to-wit—that the law under which the foreclosure was had was passed after the mortgage was executed, and that the method of foreclosure prescribed by that statute impaired the obligation of the contract of mortgage, and was therefore void by the Constitution of the United States—does not clearly appear from

the pleadings or the decree, or any other proceedings in the case, yet it does appear that the question was discussed in the opinion of the Court, and the Court was of the opinion that the statute did not impair the obligation of the contract. If this were all of the case we should undoubtedly be bound in this Court to inquire whether the Act of 1857 did, as construed by the Court, impair the obligation of the contract.

Bridge Propr's vs. Hoboken Co., 1 Wall., 116.

But a full examination of the opinion shows that its judgment was based upon the ground that the foreclosure was valid, without reference to the statute of 1857, because the method pursued was in strict conformity to the mode of foreclosure authorized, when the contract was made by the laws then in existence. Now, if the State Court was right in their view of the law as it stood when the contract was made, it is obvious that the mere fact that a new law was made does not impair the obligation of the contract. And it is also clear that this Court cannot inquire whether the Supreme Court of Maine was right in that opinion. Here is, therefore, a clear case of a sufficient ground on which the validity of the decree of the State Court could rest even if it had been in error as to the effect of the Act of 1857 in impairing the obligation of the contract.

And when there is such distinct and suffi-

cient ground for the support of the judgment of the State Court we cannot take jurisdiction, because we could not reverse the case, though the federal question was decided erroneously in the Court below against the plaintiff in error.

Recter vs. Ashley, 6 *Wallace*, 142.
Klinger vs. State of Missouri, 13 *Wallace*, 257.
And *Steines vs. Franklin Co.*, *Supra*, 15."

In 1875 in the case of

Brown vs. Atwell, Admr., 92 *U. S.*, 327,

C. J. Waite says, p. 329:

"We have often decided that it is not enough to give us jurisdiction over the judgment of the State Courts, for the record to show that a federal question was argued or presented to that Court for decision. It must appear that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it.

Commercial Bank of Cincinnati vs. Buckingham's Executors, 5 *How.*, 341.
Lawler et al. vs. Walker et al., 14 *id.*, 254.
R. R. Co. vs. Rock, 4 *Wall.*, 180.
Parmelee vs. Laurence, 11 *id.*, 38."

In 1878, in the case of

Citizens Bank vs. Board of Liquidation, 98 *U. S.*, 140,

the same Chief Justice says, p. 141:

"To give us jurisdiction under Sec. 709, Rev. Stat., it is not only necessary that some one of the questions mentioned in the section should exist on the record, but that the decision was controlling on the disposition of the cause.

Williams vs. Oliver, 12 *Howard*, 125.
Klinger vs. State of Missouri, 13 *Wall.*, 257."

In 1887 this case was re-affirmed in

N. O. Water Works vs. La. Sugar Co., 125 *U. S.*, 18;

and in 1888, in

De Sausure vs. Gaillard, 127 *U. S.*, 216–234.

See, also,

Marrow vs. Brinkley, 129 *U. S.*, 178.

On these motions it is not necessary to print the whole record.

Walston vs. Nevin, 128 *U. S.*, 578.

When the question is regarded as settled, the motion to affirm will be granted.

Ibid., 583.

Where the writ was manifestly taken for delay, or is frivolous, the motion to affirm will be granted.

Ruckman vs. Bergholz, 131 *U. S. App.*, *p.* cxliii.

When appeal is taken for delay and frivolous damages will be awarded.

Whitney vs. Cook, 131 *U. S. App.*, p. cxcvii.

In conclusion we ask that the motion to dismiss may be granted or the judgment be affirmed, and damages be awarded for delay.

W. H. JESSUP,
Counsel for Defendant in Error.

APPENDIX.

OPINION OF THE COURT.

This case is before us on a rule to show cause why the judgment should not be opened and the defendant let into a defense.

This judgment was entered on a bond dated June 9th, 1881, for the payment to the plaintiff of the just sum of $20,000, with lawful interest. Said principal sum being payable on the 1st day of June, 1886. This bond was entered to No. 250, October term, 1886, in the Court of Common Pleas of Lackawanna County, on the 14th day of July, 1886, and a *fi. fa.* was issued thereon same day. August 20th of same year, this Court granted a rule to show cause why the judgment should not be opened and the defendant let into a defense. A voluminous amount of testimony was taken both for and against this rule. We have gone over this vast amount of testimony with great care, in order to familiarize ourselves with all its details, and reconcile, if possible, its many contradictions.

We will first state the salient points of the testimony as adduced on the part of the defendant, and then the testimony on behalf of the plaintiff.

Isaac B. Felts, the defendant in this case, is the uncle of J. W. Hoysradt, the plaintiff. Mr. Felts at the time this bond was given by him to Mr. Hoysradt, was the owner of a tract of coal land in the Township of Lackawanna, County of Lackawanna, Pennsylvania. There was a number of liens against this land and among them a mortgage assigned to the Delaware, Lackawanna & Western Railroad Company (known throughout the testimony as the D., L. & W.) for the sum of $20,000. This mortgage was due, and the D., L. & W. were endeavoring to realize their money on it. On the 7th of June, 1881, the defendant went to Hudson, New York, the home of the plaintiff, with the intention he says of obtaining a loan with which to pay off this mortgage and other liens and claims against his real estate. There was nothing definite transacted on the 7th of June. On the morning of the 8th of June they met again, and subsequently on the morning of the 9th of June, when a deed to Mr. Hoysradt for a one-half interest in this tract of land was given by Mr. Felts, also a mortgage for $20,000 and a power of attorney to collect coal royalties.

Mr. Felts in his own behalf swears that when he arrived in Hudson on the 7th of June, 1881, he proceeded to the office of Mr. Hoysradt; that Mr.

Hoysradt was busy, and no business of any importance was transacted that day; they met again on the morning of the 8th and engaged in conversation about the loan Mr. Felts desired. They were joined by Frank Hoysradt, a brother of the plaintiff about this time, and Mr. Felts testifies he and Frank talked the matter over, and came to an agreement, viz.: That J. W. Hoysradt was to take a deed, a bond and mortgage for $20,000, and furnish money enough to pay all Mr. Felts' indebtedness, and if they could get the Hunt lease in "working operation" Felts was to have a certain proportion of the royalties, about ten or fifteen per cent. to live on, and the balance should be applied on the bonds and mortgages and when Mr. Hoysradt got his pay the property should be re-conveyed to Felts. This was a talk between Isaac Felts and Frank Hoysradt, and Felts testifies that he supposed Frank Hoysradt told this to his brother J. W. Hoysradt, the plaintiff. (A portion of this land was laid out in town lots, and in the deed and mortgage referred to, the surface of certain lots and blocks were to be reserved to Mr. Felts.) This Mr. Felts says was on the 8th of June, 1881, between 8 and 11 o'clock A. M. After this talk between him and Frank they went to the office where J. W. Hoysradt, the plaintiff was, and after they got there Albert Hoysradt, a son of plaintiff, and a man named Jordan commenced to draw the papers and

that he supposed Frank Hoysradt directed the drawing of the papers.

Mr. Felts further testifies that he was induced to go to Hudson on the 7th of June, 1881, through the representations of Frank Hoysradt, who told him the money was ready for him any time on four or five days' notice, and that Frank Hoysradt had telegraphed him to come on, which he did. That when he arrived there Mr. Hoysradt wanted him to give him a deed for the entire property, which he refused and took his satchel and started for home, but was induced by Frank Hoysradt to remain, which he did. That he at no time during the transaction of that business agreed to deed his property to J. W. Hoysradt except on condition that he was to have a re-conveyance of the same as soon as the rents and royalties would pay the money advanced by Mr. Hoysradt.

Frank Hoysradt testifies on behalf of the defendant that he was the agent of his brother, J. W. Hoysradt in this transaction; that it was through him or rather a telegram which his brother J. W. wrote and signed his name thereto, that Mr. Felts was induced to come to Hudson and that he was to induce him to sign these papers; that he was present at all conversations and furnished the data from which the scriveners made the deed, mortgage, bond and power of attorney, and that for so doing he was to receive from his brother a one-twelfth or one-sixteenth interest in the property. He further

testifies that Mr. Felts was so worked up about this matter and in such a nervous condition that he was instructed by J. W. Hoysradt to keep a close watch on Mr. Felts for fear he would commit suicide. That after the papers were made out Mr. Felts refused to sign them and that it was only after he had assured him that they were all right and as they had agreed upon that he finally did so.

J. W. Hoysradt, the plaintiff, testifies that he first learned of Mr. Felts' financial difficulties about April, 1879, when Mr. Felts called to see him at Hudson, and after giving some advice in reference to making a lease, &c., Mr. Felts returned home. He next saw him in the Spring of 1881, when Mr. Felts told him the D., L. & W. Co. had, or were about to advertise his property for sale, and wanted him to loan him the money, and stated that his liabilities were about $38,000 or $39,000, and showed him a statement to that effect; he wanted Mr. Hoysradt to advance the money and take the coal royalties, paying ten or fifteen per cent. thereof if he should require it for living expenses, and when Mr. Hoysradt got all his money back Felts was to deed him one-half of the property. Instead of acceding to this offer he advised Mr. Felts to go home and make a lease, or go to the D., L. & W. Co. and make a lease with them, if he could. Felts said the D., L. & W. should have nothing to do with it, he would let the property sink first. He

then told Mr. Felts if he could not do anything to let him know.

That he next saw Mr. Felts on the 7th of June, 1881, at his office in the Hudson Iron Company's Works, in Hudson, N. Y. Mr. Felts came in when he was very busy and waited until he had finished his business; that they went to Mr. Hoysradt's house, had supper, and after that talked about this business. He stated that the sale was to be on Saturday, the 11th of June; he asked if it could not be adjourned and Felts said no; he stated that the indebtedness against the property was about $38,000 or $39,000; he again desired him to make a loan and take his pay in the royalties, reserving a percentage to Mr. Felts. Mr. Hoysradt further testifies that he informed Mr. Felts at that time that he was informed by Mr. D. N. Green that the D., L. & W. claimed the great or "G" vein, and that he (Felts) had made a lease with Hunt, and as he considered these things a detriment he would have nothing to do with it unless he could have a controlling interest in the property. That they came to no conclusion or agreement on this night (7th of June). They met again next morning, when he testifies Mr. Felts renewed his proposition about a loan, and paying it from the royalties, &c. He then told him he wanted to see Judge Cadman. At that interview he mentioned something about lots he had sold or contracted to sell, and he ought to reserve the surface, and also the

house where he lived and another house; this was about 11 o'clock A. M., June 8th, and had no further conversation with him about the matter until that evening, after Judge Cadman returned. In the evening he and Felts went to the office of Judge Cadman, when Mr. Felts, in the presence of Mr. Hoysradt, his son Albert, and a Mr. Jordan, stated that he was in debt largely, that he owned a valuable tract of coal land near Scranton, that the property was advertised for sale and he was afraid it would be sold, and wanted me to advance the money to pay his indebtedness, and then repeated that Mr. Hoysradt take the royalties, &c., as already detailed. Judge Cadman stated that would not do, it must be either a loan or a sale, and he asked him if he intended Mr. Hoysradt was to have one-half of the property, he said he did; and Judge Cadman said that was the time to make a deed and not afterwards. Judge Cadman then said, "We had better think of this to-night and come here in the morning." That nothing further was done that night. They met again next morning, the 9th of June. Mr. Hoysradt says Mr. Felts and he were in the latter's library and he asked Felts if he understood what the Judge said, and told Mr. Felts he must have a deed for one-half of the property and he would take a mortgage on the other undivided half for whatever the amount might exceed $20,000, and to that Mr. Felts agreed. They then went to the office and made that state-

ment substantially to Judge Cadman. The Judge then stated that there ought to be an assignment of one-half interest in the lease and of the claim against the D., L. & W. Co. for coal taken. (This claim for coal is for coal taken by the D., L. & W. Co. from the big or "G" vein of coal underlying this land, and which they claim to own.) Mr. Felts wanted a restriction clause that Mr. Hoysradt should not have anything to do with the D., L. & W. Co. This was not agreed to. After further talk on the subject Mr. Hoysradt testifies that he got up and left the office, saying he would not have anything to do with it; that he did not care to have anything to do with it; that he was going into it under protest of his family, simply to help Mr. Felts. That after he had gone twenty or thirty yards from the office his son hailed him and said Mr. Felts wanted him to go back. He refused, and his son urged him. On the way back he met his brother, Frank Hoysradt, who also urged him to go back. He went back and into Judge Cadman's room, and Mr. Felts told the Judge to go on and prepare the papers as they had agreed. The consideration for the deed was to be $20,000. Mr. Felts said the entire indebtedness was between $38,000 and $39,000. The mortgage was also to be for $20,000, and if it was found when they arrived in Scranton that the indebtedness was less than $40,000, then the difference was to be receipted on the $20,000 bond before the delivery of the

mortgage executed at Hudson. Mr. Hoysradt also testifies that he positively demanded that he should have control of the property or he would not have anything to do with it. Mr. Felts took out his maps and put them on a round table in Judge Cadman's room, and pointed out a description of the property. He also had a printed slip containing the advertisement. Mr. Felts stated that it was not correct, as it did not include the piece that was called the "Gore," and that there were other imperfections; he also pointed out what reservations he wanted to make from the map called the "Village Map." After the papers were prepared Albert Hoysradt read the papers. viz.: the bond, mortgage and deed to Mr. Felts, and Judge Cadman read the power of attorney and the assignment in presence of J. W. Hoysradt, Isaac B. Felts, Albert Hoysradt and P. M. Jordan. No one else was present. Mr. Hoysradt says he then stepped out into the front room and that soon after his son Albert and Mr. Jordan came out and stated that Mr. Felts hesitated about signing the papers. We went in and asked what the trouble was. He said it was the power of attorney and assignment putting the matter out of his hands, and he wanted that clause in in regard to the D., L. & W. Co. Mr. Hoysradt testifies that he then said to him, "Don't sign these papers at all, it is no accommodation to me to do it; I don't care to have you do it at all, and don't sign them." He sat a minute

and said, "Well, I will sign them." He then left the room again and heard Mr. Jordan call Frank Hoysradt from the front room at the front door to come in and witness the signatures. Judge Cadman took the papers and said they should be held by some one and not delivered to me. Mr. Felts suggested Judge Cadman come to Scranton and hold the papers in escrow; the Judge said he could not do so, that he must go to Albany. Mr. Felts then proposed that Albert Hoysradt take the papers and hold them until everything was all right. Judge Cadman then handed them to Albert and we left to get ready to go to the train. We left for Scranton at 3 o'clock that afternoon and arrived in Scranton about 9 o'clock next morning, June 10th, 1881. Mr. Hoysradt also testifies that when they arrived here they missed Mr. Felts and when questioned as to where he had been, stated he went to Wilkes-Barre to see Mr. Ricketts. When we arrived here and saw Mr. Sturges we discovered that Mr. Felts had omitted some mortgages from his list, and that the amount would run over $40,000, $42,000 or $43,000. Mr. Sturges then suggested that an assignment be made of those in excess of the amount, and that there should be no merger. The bond drawn in Hudson was not approved of by Mr. Sturges, and another was drawn by him and signed and substituted for it. The deed, bond, mortgage, assignment, power of attorney, &c., were delivered to him; that he paid the amount of

the D., L. & W. mortgage and took an assignment of it to protect him in any sum he would pay in excess of $40,000, and when the sum paid was reduced to $40,000, he was to satisfy one of the mortgages. He also testifies that Frank Hoysradt was not his agent or confidant in this transaction; that he never consulted with him in reference to the matter, and that whatever interest, if any, that Frank took in the matter it was on his own motion and not his; that the telegram requesting Isaac Felts to come to Hudson was written by him but at the request of Frank; that he never promised or agreed to give Frank a twelfth or sixteenth interest or any other interest in this property and that Frank was not present nor did he hear the negotiations between himself and Isaac Felts in reference to this property. That Mr. P. M. Jordan, one of the persons present and who drew some of these papers is dead. He died before the testimony in this case was taken.

On behalf of the plaintiff Judge John Cadman testifies that he was consulted by the plantiff, J. W. Hoysradt; that he suggested the giving of a deed and bond and mortgage; that there was nothing ever mentioned by Mr. Felts or anyone else to him, that this was not an absolute and unconditional sale of a one-half interest in the property and a mortgage for $20,000. He also testifies that Frank Hoysradt was not in his room that day except when he witnessed the papers after they

were made out and signed; that Frank heard none of the conversations, nor did he have a word to say about the negotiations whatever.

Albert Hoysradt corroborates his father and Judge Cadman in everything which they testify to, as having taken place when he was present. He also testifies that Frank Hoysradt was not present at any of the conferences; that he furnished no data from which he, Judge Cadman, or Mr. Jordan drew any of the papers, and in many other respects flatly contradicts the testimony both of Frank Hoysradt and Isaac B. Felts.

J. W. Hoysradt also testifies that on Monday, the 13th day of June, 1881, he, Mr. Felts and Mr. Green having looked this property over on the Saturday previous, directed E. B. Sturges, Esq., his counsel, to make a deed to Mr. Felts for the surface of what is known in the testimony as the "Gore" piece. While viewing this property on the 11th of June, Mr. Hoysradt states that Mr. Felts informed him that on a knoll near the "Gore" piece stood his grandfather's house, and that his (Felts') mother had planted some trees there, and he would like some day to build a house on that site. Mr. Hoysradt said "very well, I will deed it to you," and he instructed Mr. Sturges to make a deed to Mr. Felts for the surface and the "Gore" tract, which was accordingly done on the 13th of June, 1881. It was at that time also discovered that the reservations in the deed,

with reference to the house that Mr. Felts lived in and the other house that the houses only were reserved and not the land; this was also corrected and included in the deed from Mr. Hoysradt to Mr. Felts June 13th, 1881. In addition to this Mr. Hoysradt testifies that in September, 1881, Mr. Felts made an offer to him to purchase his interest in this property and pay him $60,000 for the same; which he declined. That on the first day of April, 1882, Mr. Felts called on him at his office in Hudson, N. Y., and asked him to name a price he would sell his interest in this property for. Mr. Hoysradt states that he informed Mr. Felts that he did not care to do it; that then Mr. Felts wanted him to name a price he would give or take, which Mr. Hoysradt declined to do, but asked Mr. Felts to name a price he would give or take and he would consider it; that Mr. Felts flew into a passion and said he was going home and was to commence proceedings for a division of the property. That on the 14th of January, 1885, N. Taylor, Esq., attorney for Mr. Felts, made him an offer on behalf of Isaac Felts of $125,000. for his interest in this property which he also declined.

Coupled with the offers made in this case the foregoing is a resume of the main facts in this case as developed by the testimony. It is true a number of witnesses besides those already referred to herein were sworn, but their testimony is only important as to certain details, which are in many

instances only slightly corroborative of the witnesses of the plaintiff and defendant. We do not consider this testimony of such vital importance to the disposition of this rule as to make a review of it necessary.

The main features of the defense in this case, and the reasons upon which they rely to substantiate the rule in this case, are as follows:

1st. Whether the contract between Hoysradt and Felts was made on the 8th day of June, 1881, or not until the next day. We are emphatically of the opinion that the contract or agreement was not made until the 9th day of June, 1881. That although the matter was talked of between the parties on the 7th and 8th days of June, 1881, yet there was no final agreement or conclusion reached before the morning of June 9th, 1881, when the papers were signed, acknowledged and delivered to Albert Hoysradt to be held in escrow.

2d. Whether Frank Hoysradt was authorized to act for J. W. Hoysradt in making the arrangements with Isaac B. Felts, the defendant?

From the overwhelming testimony of J. W. Hoysradt, Judge Cadman and Albert Hoysradt, and the manner in which they contradict Frank Hoysradt, and from his own testimony, and the manner in which he acted, and also the reasons which he alleges prompted and actuated him in the parts which he alleges he figured so prominently in this transaction, we are disposed to place but very

little credence in his testimony and *find that he was not acting for J. W. Hoysradt* in this transaction, and that the contract between Hoysradt and Felts was not made through him.

3d. Whether the contract made was for a loan and the securing of the same by pledges satisfactory to J. W. Hoysradt, or was it for an absolute transfer of any part of the property?

From all the evidence in the case we find that Isaac B. Felts made an absolute and unconditional deed for a one-half interest in this property to J. W. Hoysradt on the 9th day of June, 1881, for a consideration of $20,000, and a bond and mortgage on the remaining undivided one-half to secure Mr. Hoysradt for the sum of about twenty thousand dollars, which Mr. Hoysradt agreed to advance for Mr. Felts to pay off certain liens, &c., which were against his property, one of which liens an execution had been issued upon and the real estate of the defendant was taken into execution and was advertised to be sold two days later than this contract or agreement, viz.: June 11th 1881.

4th. Whether or not there was a conspiracy to defraud Isaac B. Felts?

The only evidence in the case that in any manner tends to show a conspiracy in our opinion is the testimony of Frank Hoysradt. As we have previously stated, we place very little credence in the testimony of Frank Hoysradt, and from the manner in which his testimony has been contra-

dicted, and his own admission as to the manner in which he acted in this whole transaction, we cannot find from the testimony that there was a conspiracy to defraud Isaac B. Felts.

We are asked by the defendant's counsel to decide whether or not an Act approved the 8th day of June. A. D. 1881, P. L. 1881, p. 84, being "An Act relating to and defining defeasances in this Commonwealth," is invalid and inoperative, because it is in violation of the provisions contained in section X, paragraph I, of the Constitution of the United States, forbidding any State to pass a law impairing the obligation of contracts. This Act, as we construe it, does not impair the obligation of contracts, it simply provides that when such contracts are made after its passage no deed for real estate absolute upon its face shall have the effect of reducing it to a mortgage unless the defeasance is made at the time the deed is made, and in writing, signed, sealed, acknowledged and delivered by the grantee in the deed to the grantor, and is recorded, &c. How this impairs the obligation of a contract we are at a loss to see; it simply provides that after its passage to reduce a deed for real estate absolute upon its face to a mortgage, certain formalities must be complied with. This we believe is in the power of the Legislature and in nowise conflicts with the provisions of the section of the Constitution of the United States above referred to.

We do not contend for an instant, that prior

to the passage of the Act of 8th of June, 1881, P. L., p. 84, such defeasible character in a conveyance could not be shown by oral testimony. But we find that this deed was not only made but was delivered subsequent to the passage of that Act, therefore the rule laid down in *Sweetzer's Appeal, 21, P. F. S., 264*, and in other cases need not be followed.

We have studied this case carefully and have weighed the testimony adduced by the defendant and the plaintiff, and after a careful consideration of the same we find that there is a preponderance of testimony in favor of the plaintiff in this case. It is true there is a conflict in the testimony, but viewing it altogether and comparing the many contradictions we repeat there is a preponderance of the testimony in favor of the plaintiff.

And now, to wit, April 23d, 1888, the rule to show cause why the judgment in this case should not be opened and the defendant let into the defence is discharged."

JNO. F. CONNOLLY,
Additional Law Judge.

OPINION OF THE SUPREME COURT OF PENNSYLVANIA.

Appeal of ISAAC B. FELTS from the Court of Common Pleas of Lackawanna County. } No. 75, July Term, '88.

Filed March 18, 1889.

PER CURIAM:

There is no occasion for our discussing this vast mass of testimony. The opinion of the learned judge below refusing to open the judgment is so full, clear and satisfactory that we affirm the case for the reasons given by him.

The order discharging the rule is affirmed, and the appeal dismissed at the cost of the appellant.

STATE OF PENNSYLVANIA, } ss.
EASTERN DISTRICT. }

I, Charles S. Greene, Prothonotary of the Supreme Court of Pennsylvania, in and for the Eastern District, do hereby certify that the above and foregoing is a true copy of the OPINION in the above entitled cause, so full and entire as appears of record in said Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Philadelphia, this 13th day of November, A. D. 1889.

LEWIS C. GREENE,

[SEAL.] *Pro-prothonotary.*

AN ACT

Relating to and defining defeasances in this Commonwealth:

"SECTION 1. *Be it enacted, &c.*, That no defeasance to any deed for real estate, regular and absolute upon its face, made after the passage of this Act, shall have the effect of reducing it to a mortgage, unless the said defeasance is made at the time the deed is made, and is in writing, signed, sealed, acknowledged and delivered by the grantee in the deed to the grantor, and is recorded in the office for recording deeds and mortgages in the county wherein the said lands are situated, within sixty days from the execution thereof; and such defeasance shall be recorded and indexed as mortgages by the Recorder."

Approved June 8, 1881.